In the Supreme Court of the United States

OCTOBER TERM, 1943

No. 766

HUDSON & MANHATTAN RAILROAD COMPANY, APPELLANT

v.

CITY OF JERSEY CITY, AND FRED M. VINSON, ECONOMIC STABILIZATION DIRECTOR, BY CHESTER BOWLES, PRICE ADMINISTRATOR, APPELLEES

MEMORANDUM FOR THE ECONOMIC STABILIZATION DIRECTOR IN RESPONSE TO MOTION OF APPELLANT TO CORRECT DIMINUTION OF RECORD

The motion submitted by appellant relates to its appeal from the order of the court below granting a preliminary injunction. A separate appeal (No. 767) has been taken by appellant and the Interstate Commerce Commission from the order entering a final injuncton.

In view of the final injunction and the appeal therefrom, it is submitted that questions relating to the granting of the temporary injunction are no longer in issue, and that the appeal in No. 766 should be dismissed. *Smith* v. *Illinois Bell Telephone Company*, 270 U. S. 587.

Appellant seeks to raise the question whether the court below erred in not exacting a bond from appellee City of Jersey City as a condition of granting the preliminary injunction. The injunction was sought also, however, by the Economic Stabilization Director, to protect the public interest against an increase in rates ordered without a proper hearing in the light of the Inflation Control Act of October 2, 1942. The court's findings on issuing the preliminary injunction, particularly Findings 5 and 6, disclose that the injunction was granted because "the national interest requires that the fares of the said railroad be maintained as currently in effect, which present fares are the same as those in effect on September 15, 1942, pending final hearing of this cause." (Finding 6.) The Director was clearly exempted by Rule 65 (c) of the Federal Rules of Civil Procedure from any obligation to give security. That Rule provides: "No such security shall be required of the United States or of an officer or agency thereof." It thus appears that the question sought to be raised by appellant with respect to a bond is academic. There is no occasion to consider appellant's position had there been an attempt to enforce the preliminary injunction by the City of Jersey City. The same answer applies to the suggestion of appellant that, apart from a bond, it is entitled to damages against the City by reason of what is unaccountably described as the latter's

"reckless, if not malicious, prosecution" of its application for preliminary injunction. (Motion, p. 11.)

Although for the reasons stated herein and in our motion to dismiss the present appeal, we believe that the controversy is limited to the issuance of the final injunction, we raise no objection to the inclusion in the record of the portions of the transcript which are the subject of appellant's motion.

Respectfully submitted.

CHARLES FAHY,
Solicitor General.
RICHARD H. FIELD,
General Counsel,
Office of Price Administration.

MARCH 1944.

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